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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 ROBERT CARSON,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant.
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CASE NO. C18-5858 MJP

ORDER FOR REMOTE / VIRTUAL
CIVIL BENCH TRIAL

17 The Court ORDERS that the bench trial scheduled to commence on July 15, 2021, at 9:00
18 AM, shall be conducted using the following procedures and protocols.

19 **A. Remote / Virtual Trial Format**

- 20 1. The entire bench trial will take place using the ZoomGov.com platform. The
21 parties, counsel, witnesses, and court staff will not be physically present in the
courtroom.
22 2. The public will have telephonic access via a number published on the Court's trial
23 calendar.
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1 **B. Preparation**

- 2 1. Counsel shall familiarize themselves with the ZoomGov.com and Box.com
3 platforms by reviewing the tutorials located at
4 <https://www.wawd.uscourts.gov/attorneys/remotehearings>.
5 2. Counsel shall ensure that they and each of their witnesses have the hardware,
6 software, data bandwidth, and Internet access required to participate remotely.
7 The minimum system requirements are posted at
8 <https://www.wawd.uscourts.gov/attorneys/remotehearings>.
9 3. Counsel shall also ensure that they have one or more alternative means of
10 communicating with their clients and witnesses, as well as with the Court, outside
11 the ZoomGov.com platform (*e.g.*, via cellular phone or email).
12 4. Counsel shall consider establishing a high-speed Internet connection (a hard-
13 wired connection is generally preferable to a wireless Internet connection).
14 Counsel shall also consider the feasibility of participating from their office if the
15 impact of others requiring Internet usage during the proceedings might impact a
16 participant's connection speed.
17 5. Parties and counsel are to participate on with the court and court staff for a
18 technology check to occur at a mutually agreed-upon date.

17 **C. Recording**

- 18 1. The Court will provide a court reporter for the trial. No part of the trial may be
19 reproduced, distributed, or transmitted in any form or by any means, in whole or
20 in part, by any participant (attorney, party, or witness) or public observer. This
21 prohibition includes any audio or video recording, photographs, and/or
22 screenshots. The parties and counsel shall ensure that each trial participant for
23 which they are responsible acknowledges and agrees to this prohibition.

23 **D. Witnesses and Participants**

- 24 1. Counsel shall provide, via email to the Court's Trial Coordinator and Courtroom

Deputy, Grant Cogswell (grant_cogswell@wawd.uscourts.gov or (206) 370-8949), the following information for each party, attorney, paralegal, legal assistant, trial or technical consultant, and witness who will participate remotely:

- Name
- Email address
- Phone number
- Participant status (*e.g.*, party, attorney, witness, etc.)

2. Prior to trial, the Court's Trial Coordinator will supply to counsel the links for the ZoomGov.com sessions. Counsel shall forward the links to other participants, including witnesses, as appropriate.
3. After using the link to access the ZoomGov.com session, participants will enter a virtual waiting room. They will be admitted from the virtual waiting room into the virtual courtroom when appropriate. Counsel are responsible for notifying witnesses when and how they are expected to report to the virtual waiting room.
4. Participants who will not be examining witnesses, testifying, or otherwise presenting matters during the proceedings (e.g., attorneys, paralegals, legal assistants, and trial or technical consultants) shall use the ZoomGov.com platform controls to mute their microphones and deactivate their cameras.
5. During the virtual hearing, each party will be visible on video with microphones muted.
6. Counsel and the witness are not to communicate through any other device or method while the witness is testifying. Counsel and the witness may not be in the same room.

E. Exhibits

1. Exhibits shall be numbered in advance of trial in accordance with the following protocol: (A) Plaintiff's exhibits shall be numbered consecutively beginning with 1; and (B) Defendant's exhibits shall be numbered consecutively beginning with

1 the next number series not used by plaintiff. Duplicate documents shall not be
2 listed twice. Once a party has identified an exhibit in the pretrial order, any party
3 may use it.

- 4 2. All exhibits shall be delivered to the Court and uploaded by counsel to the
5 “Box.com” platform via one or more links that the Court’s Trial Coordinator will
6 provide via email prior to the trial date if Counsel wish to display the documents
7 on the screen during the trial.
- 8 3. Exhibits as to which admissibility has been stipulated shall be uploaded to the
9 Box.com folder labeled “Admitted Exhibits.” Exhibits as to which admissibility is
10 disputed shall be uploaded to the respective Box.com folders labeled “Plaintiff’s
11 Proposed Exhibits” and “Defendant’s Proposed Exhibits.” At the end of each trial
12 day, the Court’s Trial Coordinator and counsel will confer, and the Court’s Trial
13 Coordinator will transfer into the “Admitted Exhibits” folder any exhibits in the
14 folders for “Plaintiff’s Proposed Exhibits” and “Defendant’s Proposed Exhibits”
15 that have been offered and admitted into evidence.
- 16 4. After the close of evidence, the Court’s Trial Coordinator and counsel will confer
17 to confirm that the “Admitted Exhibits” folder accurately reflects the evidence
18 admitted during the course of trial.
- 19 5. Hard copies of all exhibits shall be delivered to an address provided by the
20 Court’s Courtroom Deputy at least two (2) judicial days before the first day of
21 trial. These exhibits shall be bound in one or more three-ring notebooks and
22 appropriately tabbed by exhibit number. While testifying, each witness shall have
23 available a copy of any exhibit that he or she will be expected to use or examine
24 during the trial. The witness shall not access any copy of an exhibit unless and
until instructed to do so by the examining counsel. With regard to exhibits as to
which admissibility is disputed, counsel may present arguments and, if necessary,
voir dire witnesses, using the screen-sharing function in ZoomGov.com to display

1 the exhibits at issue from the respective Box.com folders. To the extent possible,
2 the Court will rule on the admissibility of exhibits before a witness who is
3 expected to use or examine such exhibits testifies.

- 4 6. The parties shall comply with Local Civil Rule 32(e) concerning the use of
5 depositions at trial. Video depositions that are used as substantive evidence shall
6 be broadcast via ZoomGov.com using the screen-sharing function. Counsel may,
7 but are not required to, upload video depositions to their respective Box.com
8 folders, but the recordings will not be transferred to the “Admitted Exhibits”
9 folder. Transcripts of depositions used during the trial for impeachment or as
10 substantive evidence need not be sealed prior to their use. Counsel may either
11 show the portion of the transcript at issue to the witness using the screen-sharing
12 function in ZoomGov.com or transmit the entire transcript to the witness via mail,
13 email, or otherwise in advance of his or her testimony.
- 14 7. If a program or platform other than Box.com will be used to publish exhibits, then
15 counsel shall file, prior to the first day of trial, a certification signed under penalty
16 of perjury indicating that the exhibits to be displayed using the other program or
17 platform are identical to the exhibits uploaded into the folders on Box.com. The
18 parties may use trial presentation technology to present exhibits through the
19 screen share function in ZoomGov.com.

18 **F. Professionalism During the Trial**

19 **1. Ambient Noise Protocols:**

- 20 a. All participants who are not actively being questioned as a witness, asking
21 questions of a witness, defending a witness, or providing or responding to
22 opening statements, closing arguments, or other arguments, shall use the
23 ZoomGov.com platform controls to mute their microphone and deactivate
24 their video camera. The Court’s Trial Coordinator, who will “host” the
ZoomGov.com sessions, will mute any participant who fails to follow this

1 protocol.

2 b. Participants using multiple devices in a single workspace to access the trial
3 should avoid audio feedback issues by using the microphone and speakers
4 on only one device at a time, or by using headphones.

5 2. **Courtesy and Decorum**: To the extent possible, remote trial participants should
6 conduct themselves in the same way they would if they were physically present in
7 a courtroom. They should avoid interrupting someone who is speaking, except as
8 necessary to raise an objection. Virtual trial participants should silence electronic
9 devices other than the devices necessary to their remote participation, close
10 unnecessary computer programs or applications (such as email or calendar
11 notifications), and take steps to remove or minimize anything in their remote
12 workspace that might distract from the integrity of the proceedings. The Court
13 understands that conducting trial virtually, from one's home, for example,
14 presents many challenges. The Court asks all remote participants to do their best
15 to maintain professionalism in order to conduct a fair and efficient trial.

16 3. **Objections**: Counsel should make their objections orally. When an objection is
17 made, the witness shall stop talking until the Court rules on the objection.

18 4. **Disconnection**: In the event that the Court, a party, an attorney of record, a
19 witness, or anyone else necessary to the proceedings becomes disconnected from
20 the remote trial, the trial will stop while the connection is reestablished. If the
21 participant has difficulty reconnecting, he or she should call or text Grant
22 Cogswell. In advance of calling a witness to the virtual stand, counsel must
23 establish with the witness a protocol for contacting the witness in the event of
24 disconnection and ensure that the alternative means of communication (*e.g.*, a
cellular phone) is operational.

5. **Appropriate Dress**: Parties, witnesses, and counsel shall dress in the same
manner as they would if they physically appeared in a courtroom.

- 1 6. **Screen Names**: Remote participants should endeavor to use a screen name in the
2 ZoomGov.com platform that indicates their actual first and last names. As “host,”
3 the Court’s Trial Coordinator will rename any participant whose screen name is
4 incomplete, confusing, unprofessional, or otherwise improper.

5 **IT IS SO ORDERED.**

6 The Clerk is directed to send copies of this Order to all counsel of record.

7 DATED this 30th day of June, 2021.

8 

9 Marsha J. Pechman
10 United States Senior District Judge